Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Access 220, L.L.C.	)	
Request for Waivers to Provide	)	WT Docket No. 02-224
Band Management Services	)	
Utilizing Licenses in the 220-222 MHz Band	)	
	)	

To: the Wireless Telecommunications Bureau

COMMENTS OF THE
UNITED TELECOM COUNCIL

The United Telecom Council ("UTC") hereby submits its Comments on the *Public Notice* in the above-captioned proceeding.[1] UTC supports Access 220, LLC's ("Access") request for waivers of the FCC's Rules to the extent necessary to provide band manager services on its current and any future 220-222 MHz licenses.[2]

I. INTRODUCTION

UTC is the national representative on communications matters for the nation's electric, gas, and water utilities, natural gas pipelines and other critical infrastructure ("CI") industry entities. Approximately 1,000 such entities are

[1] "Wireless Telecommunications Bureau Seeks Comment on Access 220, LLC Request for Waivers to Provide Band Management Services Utilizing Licenses in the 220-222 MHz Band," *Public Notice,* DA 02-1939, released August 6, 2002 (the "Notice").

[2] *See,* Request for Waivers of Access 220, LLC, filed July 3, 2002 ("Access Request").

members of UTC, ranging in size from large combination electric-gas-water utilities that serve millions of customers, to smaller, rural electric cooperatives and water districts that serve only a few thousand customers each. Together with the Critical Infrastructure Communications Coalition ("CICC"),[3] UTC represents the telecommunications and information technology interests of virtually every utility, pipeline, railroad and other CI entity in the country.

As potential users of Access's 220 MHz service, the rule waivers proposed in this proceeding indirectly affect UTC's members and those of its affiliates. UTC, its affiliates and their thousands of members continue to be increasingly concerned about the lack of dedicated spectrum for use by the Nation's CI industries, as well as increasing congestion, noise and potentially life-threatening interference on the few available private land mobile radio (PLMR) bands available for their use along with other private wireless eligibles. With hundreds of thousands of licensees and tens of millions of end users on a shrinking amount of spectrum, all of private wireless, in fact, is in need of additional spectrum, as has been emphasized to the Commission for several years.[4]

Band manager licenses offer a partial solution to this problem. UTC emphasizes that band managers cannot take the place of a nationwide,

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[3] The CICC is composed of the following organizations: The American Gas Association, the American Petroleum Institute, the American Public Power Association, the American Water Works Association, the Association of American Railroads, the Edison Electric Institute, the Interstate Natural Gas Association of America, the National Association of Water Companies, the National Rural Electric Cooperative Association and UTC.

[4] *See, e.g.,* An Allocation of Spectrum for the Private Mobile Radio Services, RM-9267, Petition for Rulemaking of the Land Mobile Communications Council (April 22, 1998).

dedicated spectrum allocation permitting interoperability among entities, especially under emergency conditions. However, this innovative form of licensing is far preferable to the usual subscriber-based commercial system, since it permits users to build and control their own systems to meet their own needs. Further, Access's waiver request would put 220-222 MHz spectrum to better and more efficient use than this band has enjoyed in the past, while furthering the Commission's goals of regulatory flexibility and market-based spectrum solutions. Therefore, UTC supports the Access Request and recommends that the FCC grant all relief requested.

II. DISCUSSION

A. The Proposal Outlined in the Access Request Offers Responsible Spectrum Management and Promotes Efficiency.

UTC notes that Access proposes to offer the same kind of band manager services using its 220 MHz spectrum that it is offering in the 700 MHz guard band spectrum purchased specifically for this service. The Access Request recommends that its 220 MHz band manager offering be subject to nearly identical rules, including:

- Written agreements between Access and its end user customers concerning compliance with FCC rules;
- Anti-discriminatory treatment of prospective users, to be predominantly non-affiliates, and non-restrictive use of its licensed spectrum;
- Annual reports to the Commission including end user information, and compliance with environmental, international and technical FCC rules.[5]

[5] *See,* Access Request at 4-5.

In this way, Access offers to be bound to nearly all of the same requirements for this spectrum that govern the only designated band manager frequency band, with which it is thoroughly familiar as an existing licensee. UTC agrees that this regulatory framework is appropriate and necessary to ensure that final users of the spectrum are both treated fairly by the licensee and required to comply responsibly with FCC Rules, that Access is able to control the use of its spectrum to ensure rule compliance, and that the Commission has sufficient information about the use of the spectrum for any enforcement activity.

Access does request relief from several elements of the 700 MHz guard band rules, including the prohibition against cellular architecture and the requirement to notify public safety coordinators of new pending users.[6] Those rules from which the Access Request seeks waiver generally apply to the 700 MHz spectrum for reasons applying only to that band: namely, its existence as a "guard band" to protect adjacent public safety licensees from prospective wide-area commercial systems. UTC especially notes the need for waiver from the cellular architecture prohibition, defined "for purposes of this part, as one that consists of many small areas or cells (segmented from a larger geographic service area), each of which uses its own base station, to enable frequencies to be reused at relatively short distances."[7] While this prohibition is helpful in the 700 MHz band to protect public safety operations from harmful interference, the same prohibition in the 220 MHz band would serve to forestall the

[6] *See,* Access Request at 5.

[7] 47 C.F.R. § 27.2(b).

implementation of spectrum-efficient technology, able to meet the needs of many private wireless users, that might meet this definition. UTC notes that Access is not seeking waiver from rules that would otherwise ensure its responsible management of this spectrum, and supports the rule waivers it requests.

While seeking waiver from rules not applicable to the 220-222 MHz band, Access proposes to extend technical requirements specific to this band to any end users licensed under its Spectrum Use Agreements (SUA).[8] This also is appropriate to ensure that the operations of non-licensees do not cause harmful interference to other licensees.

Finally, Access notes that it requires waivers from two rule sections governing the 220-222 MHz band, those concerning permissible uses of the spectrum and the construction requirements for Phase I licenses and Phase II nationwide licenses.[9] Such waivers are needed to implement a band manager licensing regime, another commercial service offering, in this band. The rules governing use of the 220-222 MHz band pre-date the introduction of the band manager concept; had the FCC had this option before it, it may well have included this offering among permissible uses of the band. So long as Access is required to provide information concerning its end users' activities on licensed

[8] *See,* Access Request at 5-6.

[9] 47 C.F.R. § 90.733, to add band manager operations; 47 C.F.R. §§ 90.725, 90.769, to permit alternative construction showings due to the lack of actual facilities operation by band managers.

frequencies and to provide the guarantee of substantial service it proposes,[10] waiver of these rules would be in the public interest.

B. The Access Request Offers a New, Compatible Service for an Underused Frequency Band.

UTC is very familiar with the history of the 220-222 MHz band. While the characteristics of this spectrum are excellent for land mobile voice and data operations, its allocation as a narrow-band experiment has, unfortunately, not led to the success hoped for at the time.[11] The trend in technology toward digital systems, with their internal division of wider channels rather than operation on narrow licensed bandpaths, seems to have left this small allocation and its narrowband channel plan behind. While nearly all of the 220-222 MHz spectrum has been subjected to auction for CMRS services, UTC is not aware of any successful wide-area commercial offering in this band.

However, the Commission's decision to permit the aggregation of 5 kHz channels into wider bandwidths offers opportunities for other potential users. UTC is aware that mainstream PLMR equipment manufacturers are looking again at this spectrum. With Access's acquisition of spectrum throughout the nation and consolidation of frequencies into wider channels, a viable use of this excellent PLMR spectrum may be forthcoming.

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[10] *See,* Access Request at 17-18.

[11] *See,* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, *Report and Order,* 6 FCC Rcd 2356, at ¶6 (1991).

As Access notes, one of the original purposes of the 220-222 MHz allocation was to meet increasing PLMR communications needs. [12] UTC emphasizes that the band manager framework, allowing users to build and operate their own systems through contractual agreement with the licensee, offers a much better tailored service to PLMR users such as some utilities than traditional commercial networks. An SUA permits the licensee and end user to come to a mutual agreement that meets the needs of both: the end user can build the reliability, coverage and service features it needs into its contracted spectrum, then control and maintain it as needed to meet safety and other regulatory requirements. All of this is impossible through traditional subscriber-based commercial services.

The establishment of band manager services in the 220-222 MHz band seems an appropriate marriage of excellent PLMR spectrum with a regulatory framework suitable for many end users. The flexibility of these rules allows both parties to meet their own needs while making more efficient use of under-utilized spectrum. As such, it is the kind of market-based solution the FCC has outlined for spectrum policy initiatives.[13] UTC again emphasizes that a band manager offering, coming as it would from a separate licensee without full access to the band and with only a limited amount of spectrum to offer, will not meet the nationwide, mission-critical communications needs of CI entities. However, the

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[12] *See,* Access Request at 6-7.

[13] *See, e.g.,* "FCC Chairman Michael K. Powell Outlines Critical Elements of Future Spectrum Policy," FCC News Release, August 9, 2002 (noting "more efficient use of spectrum" and "shift from a 'command and control' model of regulation to market based mechanisms" as first two objectives).

proposed service will help to alleviate the critical shortfall in PLMR spectrum by opening availability to previously auctioned spectrum to those who would otherwise have no viable means of using it.

III. CONCLUSION

WHEREFORE, UTC recommends to the FCC that the Access Request be granted, and that Access 220, LLC be granted waiver of the Commission's Rules as requested or necessary to permit it to provide band manager services on current and future-acquired spectrum licenses in the 220-222 MHz band.

Respectfully submitted,

__/s/_____
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